

ESTATE OF HENRY FRANK RACINE

IBIA 77-52

Decided January 10, 1978

Appeal from decision denying petition for rehearing.

Affirmed.

1. Indian Probate: Divorce: Indian Custom: Generally

A divorce in accordance with Indian custom may be accomplished unilaterally by either of the parties to a marriage. The fact of a separation, plus an intention on the part of at least one of the parties that the separation shall be permanent, established by competent evidence is sufficient to terminate a marriage.

2. Indian Probate: Divorce: Indian Custom: Generally

An Indian custom divorce dissolves a ceremonial marriage as well as an Indian custom marriage.

3. Indian Probate: Marriage: Indian Custom: Generally

In the absence of controlling federal legislation or formal tribal action, marriages of Indians living in tribal relation may be contracted and dissolved in accordance with Indian custom.

APPEARANCES: John P. Moore, Esq., Frisbee, Moore & Epstein, for appellants, Donald J. Racine and Arlene Mary Racine Sinclair; D. Michael Eakin, Esq., Montana Legal Services, for appellee.

OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from an order denying petition for rehearing.

Henry Frank Racine, hereinafter referred to as decedent, Blackfeet Allottee of the Blackfeet Indian Reservation, died intestate on April 18, 1974, possessed of trust or restricted property.

After hearings were held, Administrative Law Judge Frances C. Elge, issued an Order on December 22, 1976, determining among other things, that Elizabeth Ackakinow (Akino) Galbavy Racine, a Rocky Boys Indian, to be decedent's surviving spouse, entitled to 1/3 or 65/195 interest in decedent's trust or restricted property.

The surviving children of the decedent from a previous marriage to Victoria Damon, divorced 1946 and now deceased, petitioned for rehearing, contending, there was no evidence presented to Administrative Law Judge Elge at the hearing upon which she could find that Elizabeth Akino was the wife of the deceased.

The petitioners contended the issue to be, whether or not the deceased and Elizabeth Akino established a common law marriage between March 31, 1966, and November 20, 1967. Elizabeth Akino had previously married Maurice Belgard, an Indian of undisclosed origin, in 1942. Maurice Belgard died on or about March 31, 1966. The petitioners alleged in their petition for rehearing that the Blackfeet Tribe adopted a resolution on November 20, 1967, outlawing common law marriages.

Judge Elge having retired, probate jurisdiction on the Blackfeet Reservation vested in Administrative Judge David J. McKee. Upon review of the entire record and petitioners supportive brief, Judge McKee affirmed Judge Elge and denied the petition for rehearing.

Did Judge Elge commit error in finding the existence of a common law marriage between the decedent and Elizabeth Akino prior to November 20, 1967?

We think not.

The record discloses Elizabeth Akino married Maurice Belgard in 1942 and that he died on or about March 31, 1966. Elizabeth Akino testified at the hearing that she and the decedent began living together in 1948 openly as man and wife. She immediately assumed the decedent's name, Racine, and there were three children born out of this relationship. The decedent and Elizabeth Akino acknowledged the children to be theirs in birth certificates and otherwise. There was however no record of a final divorce of Elizabeth Akino from Maurice Belgard,

Although the appellants challenge the existence of a common law marriage, they submitted no evidence disputing the facts mentioned in the previous paragraph nor supportive of their position.

The presumption of marriage must be repelled by the party disputing it and this can be done only by satisfactory evidence. In re Huston's Estate, 48 Mont. 524, 139 P. 458.

The evidence before the Board does not show a court ordered decree of divorce in the matter of Elizabeth Akino v. Maurice Belgard. However, a divorce in accordance with Indian custom may be accomplished unilaterally by either of the parties to the marriage. The fact of a separation, plus an intention on the part of at least one of the parties that the separation shall be permanent, established by competent evidence is sufficient to terminate a marriage. An Indian custom divorce dissolves an Indian custom marriage.

In the absence of controlling Federal legislation or formal tribal action, marriages of Indians living in tribal relation may be contracted and dissolved in accordance with Indian custom. Estate of John Ignace, 5 IBIA 50 (March 19, 1976); Estate of Theodore Shockto, 2 IBIA 224 (April 12, 1974). ,

For the purposes of this decision, we accept November 20, 1967, as the date the Blackfeet Tribe adopted a resolution outlawing common law marriages.

We find the evidence to be substantial that Elizabeth Akino left Maurice Belgard permanently; that an Indian custom divorce was effected prior to 1948; and that an Indian custom marriage or a common law marriage was effected between Elizabeth Akino and decedent prior to November 20, 1967, Elizabeth Akino having lived with decedent continuously, openly and notoriously, as man and wife, she bearing him three children, from 1948 until his demise.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, it is ordered that the Order Determining Heirs dated December 22, 1976, be, and the same is hereby AFFIRMED, and the appeal is DISMISSED.

This decision is final for the Department.

Done at Arlington, Virginia.

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Mitchell J. Sabagh  
Administrative Judge

I concur:

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Alexander H. Wilson  
Chief Administrative Judge